

EXHIBIT 5



PohlmanUSA®
Court Reporting and
Litigation Services

Kenny Golladay - Statement for the Record

December 3, 2020

Clarity Sports International, LLC, et al.

vs.

CAA Sports, et al.

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

CLARITY SPORTS INTERNATIONAL, LLC,
and JASON BERNSTEIN,

Plaintiffs,

vs.

Case No. 1:19-cv-00305-YK

CAA SPORTS, et al.,

Defendants.

Videoconference Statement for the Record

December 3, 2020
10:20 a.m.

Stephanie R. Dean, RPR

1 REMOTE APPEARANCES:

2 On behalf of the Plaintiffs:

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On behalf of Defendants MVP Authentics, LLC,
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On behalf of Defendants Redland Sports and Gerry
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19

ALSO PRESENT:

20 Jason Bernstein

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1	I N D E X	
2	EXHIBITS	
3	Exhibit 1 - Notice	4
	Exhibit 2 - Subpoena	4
4	Exhibit 3 - Process Server information	4

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1 P R O C E E D I N G S - (Remote)

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3 MR. COMERFORD: This is John Comerford
4 representing Plaintiffs Clarity Sports
5 International, LLC and Jason Bernstein. The time
6 is 10:21 Eastern time on December 3rd. We are here
7 for a videotaped deposition of third-party witness
8 Kenny Golladay, who is a wide receiver in the
9 National Football League. Mr. Golladay was served
10 with a subpoena and has not shown up yet for the
11 deposition, so I'd like to enter a few exhibits,
12 and I can share my screen.

13 (Thereupon, Exhibits 1 through 3 were marked for
14 purposes of identification.)

15 MR. COMERFORD: So Exhibit 1 is the Notice
16 of Subpoena to Mr. Golladay dated November 2nd
17 2020. That will be Exhibit 1. Exhibit 2 is the
18 subpoena to Mr. Golladay, 92 pages, and it says
19 that the deposition will be conducted by video
20 conference, and we did that because of the COVID-19
21 pandemic and the travel restrictions and social
22 distancing requirements. The date and time is
23 December 3, 2020 at 10:00 a.m. Eastern time, and it
24 says the deposition will be recorded by stenography
25 and video, and it's dated November 2nd.

1 Exhibit 3 is the return that we got from
2 the process server. His name is Robert Lutren,
3 L-u-t-r-e-n. And Mr. Lutren served Mr. Golladay on
4 November 3rd 2020. Mr. Lutren writes: I served
5 the subpoena by delivering a copy to the named
6 individual as follows, by corporate counsel, Jay
7 Colvin, lawyer for Detroit Lions organization as
8 agent authorized due to COVID, new procedure, see
9 attached letter on November 5th 2020, 12:01, p.m.,
10 and that's signed by Mr. Lutren. And then under
11 Additional Information, Mr. Lutren writes:
12 Informed if I go near Mr. Golladay, he would be
13 forced to go into quarantine. And then the fourth
14 page of Exhibit 3 is a letter dated Thursday,
15 November 5, 2020, which reads: On Thursday,
16 November 5, 2020, I, Kenneth Golladay, authorize
17 Jay Colvin to accept and receive service of process
18 on my behalf, signed Kenneth Golladay. That's
19 Exhibit 3.

20 So I subsequently had a phone conversation
21 with Mr. Colvin in which he informed me that he had
22 received a subpoena, that he would speak with
23 Mr. Golladay about it. Mr. Colvin stated that he
24 would like to coordinate Mr. Golladay's appearance
25 with Mr. Golladay's agent. I told him the agent

1 was Todd France. Mr. Colvin then said: Well, can
2 I have the contact information for Mr. France's
3 attorneys, and I provided that information to
4 Mr. Colvin by email. Mr. Colvin emailed me
5 subsequently and stated that he had left a message
6 for William Clements.

7 At this time I would ask Mr. Clements to
8 explain his --

9 MR. COOPER: Can we get the emails that
10 you're referring to?

11 MR. COMERFORD: I do. I'm not going to
12 enter them as exhibits, but we'll make them
13 available after -- if Mr. Golladay doesn't show up
14 today, which appears to be the case, we'll make
15 those available.

16 MR. COOPER: Why can't we get them today?

17 MR. COMERFORD: You can have them today.
18 I'll send them to you.

19 Mr. Clements, could you explain what
20 Mr. Colvin said to you, please?

21 MR. CLEMENTS: What's the point of it?
22 What does it matter? I already told you, but I'll
23 put it on the record. I didn't talk to him. It's
24 true, Mr. Colvin, who I got a voice message -- I
25 can't remember when. It was subsequent to -- well,

1 first, let me say this: We did receive the
2 subpoena for Golladay. I'm not aware that anybody
3 filed any objections to the subpoena. We did
4 receive from Mr. Comerford -- an email from
5 Mr. Comerford, something to the effect they were
6 able to serve Mr. Golladay. I haven't seen these
7 documents you're putting in as exhibits. It
8 doesn't really matter. So we were anticipating
9 that this deposition was going to take place today.
10 We want to participate in the deposition, but it's
11 not our deposition. I did, I think, after all this
12 receive some call from someone from the Detroit
13 Lions. I referred that call -- I didn't call them
14 back, I referred that call to my co-counsel,
15 Mr. Iaconelli, and my understanding of whatever the
16 call was was basically what Mr. Comerford just
17 said, that Mr. Colvin had accepted service on
18 behalf of Mr. Golladay. Fine. That's not our
19 issue. There really wasn't any talk about
20 coordinating a deposition, nor would I do that
21 because it's not my deposition to coordinate, so
22 that was it. I don't remember anything being
23 talked about about Todd France or that being
24 communicated to me.

25 So at this point it's 10:30, we're not

1 sure whether the witness is going to show up. I
2 always had some practical doubts as to whether the
3 witness is going to show up for a deposition on
4 Thursday before a Sunday NFL game, because
5 typically Thursday is the most important practice.
6 So my suggestion is at this point Mr. Comerford put
7 what he wanted into the record. I assume he wants
8 to do that because he's going to try to enforce the
9 subpoena against Mr. Golladay. Again, that's not
10 our issue, that's between him and Mr. Golladay.
11 And I would suggest that we adjourn, with the
12 understanding that if Mr. Golladay calls in to the
13 court reporter, they can stay online, if you want
14 to pay them, we'll be contacted, and then we'll
15 proceed from there. And if he doesn't, you're
16 going to have to go to the courts with the subpoena
17 or we'll reschedule this some other time. I don't
18 think anybody wants to stay on this video call, you
19 know, and bill our clients until there's actually
20 something to do. I, myself, am going to exit this
21 and then I'll trust that everybody will have their
22 ethics in place to contact me if the deposition is
23 starting up again.

24 MR. COMERFORD: So before you leave,
25 Mr. Clements, I would ask Mr. Iaconelli to

1 please --

2 MR. CLEMENTS: We're not saying anything,
3 John. I just told you so that's it. Mr. Iaconelli
4 is -- none of us are under oath. It doesn't matter
5 what Mr. Colvin said. The only thing that
6 Mr. Colvin -- that matters with Mr. Colvin is that
7 he said he accepted the subpoena for Golladay. We
8 have zero obligation to coordinate your third-party
9 deposition, just like you have zero obligation to
10 coordinate our third-party depositions. I would
11 have assumed that you had your ducks in a row.
12 We're ready. Everybody is here. We prepared for
13 it. I already spent time that I'm never going to
14 be able to get back. This is not my problem. It's
15 not Mr. Iaconelli's problem, it's not Mr. Cooper's
16 problem, and it's not Mr. Herber's problem. So,
17 no, we put it on the record and that's it. You're
18 not questioning us, okay? If you want to go
19 enforce the Golladay subpoena, go enforce the
20 Golladay subpoena.

21 MR. COMERFORD: I'm asking that
22 Mr. Iaconelli please explain his communications
23 with Mr. Colvin.

24 MR. CLEMENTS: You can ask him. He's on
25 the call. If he wants to explain it, he can

1 explain it. We have no obligation to explain
2 anything to you. What is your point? What is your
3 point, Mr. Comerford? Are you making an accusation
4 against me and my law firm and my co-counsel? If
5 you are, put it on the record so I can bring it to
6 the attention of the judge. Put your accusation on
7 the record.

8 MR. COMERFORD: I'm going to say something
9 and I would like to be able to say it without being
10 interrupted. What I want to say is this: I am
11 requesting that Mr. Iaconelli describe on the
12 record his communications with Jay Colvin about
13 this deposition.

14 MR. CLEMENTS: I will say, Mr. Iaconelli,
15 if you're there, if you want to do it, or did I
16 adequately sum up the conversation? Is he even
17 here?

18 MR. COMERFORD: The Zoom application that
19 we're using indicates that Mr. Iaconelli is on the
20 line but muted, and you previously said, I believe,
21 Bill, that Mr. Iaconelli is on the line.

22 MR. CLEMENTS: John, you're very
23 prosecutorial. You should come with the Fifth
24 Amendment, anything you say can and will be used
25 against you. I am sitting in my dining room in the

1 suburbs of Philadelphia. Mr. Iaconelli is in New
2 Jersey. I have no idea if he's on the line or not.
3 I mean, I'm seeing the same thing on Zoom as you,
4 I'm seeing a blank screen. I don't see any video
5 for him.

6 MR. COMERFORD: I see a screen that says
7 M. Iaconelli.

8 MR. CLEMENTS: Yeah, I see the same thing
9 as you.

10 MR. COMERFORD: So I'm asking
11 Mr. Iaconelli to speak up --

12 MR. CLEMENTS: Let's go off the record a
13 minute. I have to take this call. Off the record.

14 (Short recess.)

15 MR. CLEMENTS: Sorry about that. Two
16 things -- well, one thing. The other was from my
17 other case. Can everybody hear me?

18 MR. COMERFORD: Yes.

19 MR. CLEMENTS: Because it's somewhat
20 uncharacteristic for Michael not to speak when
21 we're talking on the record when we ask him, I
22 called him up. He's having some -- he can hear us,
23 but he's having difficulty with the audio, so I
24 don't know what the issue is.

25 MR. COMERFORD: Let's go back on the

1 record, please.

2 THE REPORTER: We are on the record.

3 MR. CLEMENTS: We are on the record. He's
4 having difficulty with the audio, so I don't know
5 what -- if you want to call him up and ask him,
6 fine, if you want to talk to Colvin, but basically
7 he was listening, he said that's about the gist of
8 it, which is all I know, I wasn't on the call, and,
9 you know, Colvin discussed service, he wanted to
10 know if we were aware of the deposition, which we
11 were, because, like I said, we got the subpoena and
12 the email from Mr. Comerford that it was served,
13 and, you know, he said that he had several --
14 however many emails and communications with
15 Mr. Comerford about the Golladay deposition, so --
16 again, I don't know what the relevancy of any of
17 this is. It seems like what your issue is is
18 you've got to enforce that subpoena against the
19 third-party or get the third-party to show up. The
20 more pressing issue, I think, for all of us is how
21 long are we going to be doing this? It's already
22 been 40 minutes and we've basically accomplished
23 zero here.

24 MR. COMERFORD: Can Pohlman record video
25 of the gallery view of the participants?

1 MR. CLEMENTS: And what's the point, John?

2 MR. COMERFORD: That's not a question for
3 you, Mr. Clements.

4 MR. CLEMENTS: I will stipulate that
5 Mr. Iaconelli is -- he's on there. He just says he
6 has technical difficulty. Why don't you walk him
7 through -- I don't know what he's doing. If I
8 click on the -- I mean, all I know is there's a
9 blue box mute and unmute. It works for me.

10 MR. COMERFORD: There's a dial-in. If
11 your computer doesn't work, there's a dial-in where
12 you can call in by phone. The number is
13 1-877-853-5257, and then the pass code is 656493.
14 The meeting ID, if you need it, is 93441466647. So
15 I would ask Mr. Iaconelli to dial in by telephone.

16 MR. COOPER: John, this is Iles --

17 MR. CLEMENTS: What are you going to do?
18 Are you going to use your special prosecutorial
19 powers to throw him in jail? I mean, what's the
20 difference? We're wasting all our time. You
21 understand this is just a lawsuit over a tortious
22 interference claim? You also understand that
23 sometimes third-party witnesses don't show up.
24 Whatever conversations that anybody has -- Colvin,
25 he didn't say he represented Golladay and we don't

1 represent Golladay, so what's the difference? I
2 mean, what are you asking about? It's like, you
3 know, go get the third party to show up. It
4 happens quite frequently. I don't know how long
5 you've been litigating, but third parties don't
6 show up. Usually, though, the attorney that's
7 noticing the deposition has the common sense and
8 courtesy to tell everybody before, if they haven't
9 heard from the witness, that the deposition is not
10 going to take place so we're not wasting our time
11 like we are here. And, if anything, you owe me an
12 hour. You. You and your firm and your client owe
13 me whatever my billable rate is this hour for
14 wasting my time.

15 MR. COMERFORD: I sent Mr. Iaconelli the
16 telephone dial-in information. Hopefully that can
17 fix his audio issues.

18 MR. COOPER: John, what's the purpose of
19 all this?

20 MR. CLEMENTS: Who knows?

21 MR. COMERFORD: I'm trying to make a
22 record of what transpired in the days before this
23 deposition.

24 MR. COOPER: Respectfully, John, that has
25 nothing to do with this deposition.

1 MR. CLEMENTS: It has nothing to do with
2 the case. If you want to make an accusation, make
3 an accusation. If you want to go to court like
4 Rudy Giuliani and tell the judge that we're doing
5 something, go ahead, Mr. Comerford, okay? It's
6 like you're really over-litigating this case. It's
7 like everything with you is if you don't get what
8 you want exactly when you want it, you cry about it
9 and it's like some sort of conspiracy. I've
10 never -- if someone would have told me I was still
11 litigating this after that NFLPA arbitration, I
12 would tell them they were nuts. It's like your
13 client must have an unlimited budget for this stuff
14 or something.

15 MR. COOPER: John, why don't you just call
16 Colvin and ask him if Golladay is going to show?

17 MR. COMERFORD: I sent an email to him.

18 MR. COOPER: And what's the response?

19 MR. COMERFORD: There has been no
20 response.

21 MR. CLEMENTS: Then why don't you have him
22 come on and put on the record what he did? I mean,
23 he's the guy you're dealing with, it's not us. We
24 have nothing to do with it. We're a third party.
25 You told me to come to a deposition, I'm at a

1 deposition, for a third-party deposition.

2 MR. COOPER: John, is there any reason not
3 to shut this down now?

4 MR. CLEMENTS: At some point I think I'm
5 going to call the judge, you know, about this
6 because this is really getting to be -- maybe we
7 should because this is really getting to be
8 ridiculous.

9 MR. COMERFORD: I would welcome that.

10 MR. CLEMENTS: Go ahead, dial it. Go
11 ahead, call her.

12 MR. COMERFORD: You said you were going to
13 call the judge and I said I welcome that.

14 MR. CLEMENTS: I'm not going to look for
15 the number, but go ahead and call and maybe we can
16 resolve this, otherwise, we're going to be sitting
17 here all day.

18 MR. COOPER: John, do you consider we're
19 at a deposition? Is that the status we're at?

20 MR. CLEMENTS: To cross-examine all
21 counsel.

22 MR. COOPER: I'm asking John. Are we in
23 the middle of a deposition, John?

24 MR. COMERFORD: We're on the record and
25 we're waiting for the witness to arrive, and I'm

1 trying to make a record of what we've done to try
2 to get the witness here, and I'm also trying to
3 make a record that counsel for CAA Sports and two
4 of the three memorabilia dealer defendants had
5 contact with the person who accepted service, and I
6 think that that should be explained.

7 MR. CLEMENTS: We already explained it to
8 you. And, number two, if your accusation is that
9 we're somehow blocking or preventing or told
10 Golladay not to show up, that's incorrect, we did
11 not. We're here ready for this deposition. If
12 that's what your allegation is, if that's what
13 you're attempting to prove, you're never going to
14 be able to prove it, okay? If you're trying to say
15 legally, Mr. Comerford, that we have some
16 obligation to affirmatively go out and procure the
17 attendance of a third-party witness that you
18 subpoenaed and arrange for the deposition, that's
19 not correct. It's your deposition. You organized
20 it with the court reporter, you served the guy,
21 you're saying. It's your obligation to make sure
22 the witness is here, and you're being an
23 obstructionist right now by keeping this deposition
24 open unless you can tell us for sure that the
25 witness is going to show up. Or as was my

1 suggestion is that we just simply go off the
2 record, have the court reporter wait, it's on your
3 dime, and if Mr. Golladay calls back in, she can
4 contact all of us and we can hop right back on.
5 I'm going to be sitting right in this very spot
6 working all day. I assume Mr. Cooper and
7 Mr. Herber will be doing the same thing. What
8 Mr. Iaconelli is doing, I don't know. I was
9 planning on attending this deposition. I didn't
10 even know he was going to be on the deposition,
11 just like I'm planning on doing Bernstein's
12 tomorrow, so what are we doing here?

13 MR. COMERFORD: I'm asking one more time
14 for Mr. Iaconelli to speak up. He is attending
15 this deposition by video, as indicated in this Zoom
16 application. He has the telephone dial-in
17 information if his computer audio is not working.
18 I'm asking Mr. Iaconelli to explain his
19 communications with Jay Colvin about this
20 deposition.

21 MR. COOPER: John, you haven't explained
22 yours. I don't know that you're obligated to. The
23 idea that we should conduct an inquisition -- I
24 guess we'll get around to asking the court reporter
25 what she did or did not do. This is insane. You

1 subpoenaed a witness. The party you went through
2 has obviously failed to do his part, if you
3 expected Mr. Colvin is it, to produce the witness.
4 We've don't have Colvin. We don't have the
5 witness. What are we doing here?

6 MR. COMERFORD: Well, we have
7 acknowledgement from Mr. Clements that
8 Mr. Iaconelli had conversations with Mr. Colvin
9 about this deposition and I would like
10 Mr. Iaconelli to state the content of that
11 conversation. I've done that with respect to my
12 communications with Mr. Colvin and I would like
13 Mr. Iaconelli to do the same.

14 MR. COOPER: Why has Colvin become the new
15 center of the memorabilia case? Is he a
16 memorabilia dealer, too? Do we have pictures of
17 him and Todd France and Jake Silver and Jimmy
18 Martin? Did we ever find out who was in those
19 wedding pictures, by the way? Those are cute.
20 Well, I'm getting off in two minutes. It's 10:48
21 here.

22 MR. CLEMENTS: We'll give it until 11. I
23 don't know if he's hearing it now or what's going
24 on. Who know? These Internet things are -- all I
25 know is I'm never getting this hour of my life

1 back.

2 MR. COOPER: I tried to avoid this problem
3 by inviting everybody to Pottsville, which is one
4 of the finest places on earth.

5 MR. CLEMENTS: Let's go off the record
6 until something happens or doesn't happen, as the
7 case may be.

8 (Short recess.)

9 MR. CLEMENTS: I'm trying to figure out a
10 technical work around, and the best one I can
11 figure is apparently -- I don't know what's going
12 on, but I'm going to call Mr. Iaconelli and have
13 him on the speakerphone and hopefully we'll be able
14 to communicate and get this over with, all right?
15 Is everybody back?

16 MR. COMERFORD: This is John Comerford,
17 I'm here.

18 MR. CLEMENTS: Iles, J.T.?

19 MR. COOPER: Present.

20 MR. IAConelli: Hello.

21 MR. CLEMENTS: Michael, I have you. We're
22 on the record. I just explained to them you're
23 having some technical problems, so hopefully
24 everybody will be able to hear. We'll see here if
25 the court reporter can hear you. Go ahead.

1 MR. IACONELLI: Can the court reporter
2 hear me?

3 THE REPORTER: Yes.

4 MR. IACONELLI: I just want to make
5 certain that everyone received the email that I
6 sent a while ago, because I did log on through the
7 Pohlman service and I see people speaking through
8 the computer, but my computer will not allow me to
9 unmute so that I can speak, so I sent an email to
10 all of the lawyers to inform them of that. I've
11 been listening to the accusations that
12 Mr. Comerford has been making, so go ahead, John,
13 ask your question and I'll respond as appropriate.

14 MR. COMERFORD: My question,
15 Mr. Iaconelli, is can you describe the content of
16 your communications with Jay Colvin about
17 Mr. Golladay's deposition today?

18 MR. IACONELLI: Okay. Mr. Clements
19 already did that on the record, Mr. Comerford.
20 What else are you asking me as counsel to party
21 defendants in this case concerning a third-party
22 subpoena that you sent to a third party whom we do
23 not represent and whom I informed you last night
24 via email we have not communicated with?

25 MR. COMERFORD: My question is: Can you

1 tell me about your communications with Mr. Colvin
2 about whether Mr. Golladay would attend the
3 deposition today?

4 MR. IACONELLI: I'll repeat it one more
5 time. Mr. Clements already did that. So now my
6 question back to you is the same question you put
7 to me. Please describe for us the substance of all
8 of your telephonic communications with Mr. Colvin,
9 how many you had, on what dates you had them, and
10 what specifically you said to him and he said to
11 you in response concerning this subpoena that
12 you've indicated on the record today he
13 acknowledged service of on behalf of Kenny
14 Golladay?

15 MR. COMERFORD: I have already done this.
16 It's on the record. I had one phone conversation
17 with Mr. Colvin. I believe it was on
18 November 13th, and Mr. Colvin told me that he would
19 contact your office, and then Mr. Colvin told me
20 that he had left a message for Mr. Clements.

21 MR. CLEMENTS: That's true, he left a
22 message for me.

23 MR. COMERFORD: And then Mr. Clements said
24 that you, Mr. Iaconelli, had conversations with Jay
25 Colvin, so...

1 MR. CLEMENTS: I didn't say conversations
2 with an "S." I said I forwarded the message to
3 Michael and Michael talked to him. I don't know
4 how many conversations they had.

5 MR. COMERFORD: Right. And so we haven't
6 gotten any description of the conversation between
7 Mr. Colvin and Mr. Iaconelli.

8 MR. CLEMENTS: Hold on, Michael. Let him
9 speak.

10 MR. IACONELLI: Mr. Comerford, is there
11 anything else that you want to add concerning what
12 you are describing was the substance of your
13 telephone conversation with Mr. Colvin?

14 MR. COMERFORD: I think I described it
15 earlier.

16 MR. CLEMENTS: Did you characterize the
17 case? Did you explain what the case was about?
18 Did you characterize your position? I mean --

19 MR. COMERFORD: He had the subpoena. The
20 subpoena has the complaint attached. I believe I
21 noted that fact and I said "You can read it." I
22 told him it was a tortious interference case
23 between my clients and the defendants.

24 But what I'm still waiting to hear is
25 whether Mr. Iaconelli had any communications with

1 Mr. Colvin about whether or not Mr. Golladay would
2 attend this deposition today.

3 MR. IACONELLI: ...just like you
4 advocated --

5 THE REPORTER: I didn't get the first
6 part.

7 MR. IACONELLI: -- with Arbitrator Kaplan
8 at the initiation of your first grievance without
9 including Mr. Clements or me in that initial
10 conversation with the arbitrator. There seems to
11 be a practice here, Mr. Comerford, of you engaging
12 in ex parte communications with third parties and
13 not including opposing counsel on those
14 communications. Remember, you initiated the call
15 with Mr. Colvin. That's what you said on the
16 record today. I didn't initiate a call with
17 Mr. Colvin, I returned a phone call. He asked for
18 a returned call. We extended him the courtesy of
19 the returned call.

20 So there's one other thing. Why are you
21 not providing immediately the emails that you
22 acknowledged at 9:30 that you exchanged with
23 Mr. Colvin summarizing your communications with him
24 regarding this deposition today? Why are you not
25 producing them right now?

1 MR. COMERFORD: I have said that I will --

2 MR. IACONELLI: ...right now while we're
3 on the record because I want to question you about
4 them.

5 MR. COMERFORD: Because I can't do that
6 while we're in the middle of the deposition on the
7 record, but I will send them around to all
8 attorneys in this case.

9 MR. IACONELLI: ...while we're on the call
10 right now, Mr. Comerford. He's your co-counsel.
11 Have Mr. Martin forward them to us immediately
12 because we want to interrogate you about these
13 ex parte communications that you had with a lawyer
14 for the Detroit Lions where you made certain
15 representations that we would like to question you
16 about.

17 MR. COMERFORD: I had to do something to
18 set up this deposition. I think we all recognize
19 that.

20 MR. CLEMENTS: I think the issue -- I
21 think the issue --

22 MR. COMERFORD: May I ask --

23 MR. CLEMENTS: We're sick of listening to
24 you, John. I think what the issue is -- Michael is
25 being a little facetious. This is not a contest

1 between lawyers and who exchanged emails with who
2 and what's going on and adverse inferences and this
3 and that, it's about facts. Golladay is a fact
4 witness, okay. I'm sure we would all like to have
5 Golladay testify. I don't understand the point of
6 any of this, of us asking each other about our
7 communications with Colvin. They're not
8 admissible, they're not relevant to anything that's
9 in this case. You said it's a tortious
10 interference case. We're right now wasting
11 everybody's time. Michael, please, let's get off
12 this call. So I'm going to ask you, is there
13 anything that hasn't been said about the call, and
14 this isn't a deposition or anything, but just to
15 satisfy Mr. Comerford's morbid curiosity and his
16 conspiracy theory fantasies about everything going
17 on in the case, is there anything you can recall
18 about your call with Mr. Colvin about how long it
19 was and anything else that wasn't said just so we
20 can end this foolishness?

21 MR. IACONELLI: I think you've already
22 characterized and summarized the substance of my
23 conversation with Mr. Colvin. I want to be very
24 clear about something. What I am objecting to is
25 the manner in which I believe Mr. Comerford is

1 trying to make the lawyers in this case fact
2 witnesses. It's very presumptuous and transparent.
3 We're objecting to it. As far as the timing of
4 this deposition is concerned, that's something else
5 stated on the record. You know, Mr. Comerford,
6 you're making the argument that you're somehow
7 being precluded from moving forward with the
8 deposition that you noticed for the first time on
9 November 3rd to occur on December 3rd. The reality
10 is that we had a meeting to confer with you back in
11 May of '18 -- May 2019, excuse me, where all
12 defense counsel recommended to you, in fact urged
13 you, to notice the deposition of Kenny Golladay
14 first, to occur first, so that all these issues
15 could be resolved and the witness could go on
16 record and address the substantive issues that were
17 pending at that time. You told all counsel that
18 you weren't going to do that, you were going to
19 take discovery in the timing and sequence that you
20 deemed to be appropriate. In fact, you opposed our
21 motion to stay and to bifurcate discovery so that
22 Mr. Golladay's deposition could be taken first. So
23 to suggest now on December 4th, after only reaching
24 out to us for the first time on the late evening of
25 December -- today is December 3rd -- after only

1 reaching out for the first time on the evening of
2 December 2nd that you haven't confirmed this
3 deposition of the witness. We have been
4 encouraging you to depose him since the summer of
5 2019 and it's transparent and the record should
6 reflect that. So there's nothing else that I'm
7 going to add. If you want to bring a motion, bring
8 an appropriate motion. If you want to challenge
9 what's been represented today, challenge it, but we
10 are not becoming fact witnesses in this case. I
11 believe that that's what your intention is. We're
12 not going to cooperate with you in that regard.
13 We're not parties to this case. And if you want to
14 proceed in that fashion, do what you think you need
15 to do and we will respond appropriately.

16 MR. CLEMENTS: I guess, John, if you want
17 to involve the lawyers, then we'll all start
18 deposing each other and trying cases against each
19 other, and both our firms will be disqualified from
20 being trial counsel and then that will be that,
21 right? You can get some other lawyer to represent
22 Bernstein and -- I guess Iles Cooper would be the
23 last guy standing. So this is foolishness. It's
24 just complete and utter foolishness and a waste of
25 time.

1 I apologize for the noise in the
2 background. That's my air-conditioning guys doing
3 work.

4 So the question remains at this point,
5 what are we going to do? It is now 11:02. I think
6 we can probably say that the witness is not going
7 to appear. I understand that there is a motion to
8 extend discovery pending -- I'm not sure what the
9 status of it is, if it's been granted or what
10 happened with it. We still have, even without
11 that, until the end of December if you can get --
12 procure the witness' attendance, but I just don't
13 see the point of continuing on with this -- with
14 all of us on the line sitting around waiting until
15 somebody may or may not show up and arguing with
16 one another when it has nothing to do with
17 anything. You know, arguments of lawyers are
18 arguments of lawyers. They have nothing to do with
19 one thing or the other. So what are we going to
20 do? My vote is adjourn. It's Mr. Comerford's
21 deposition. I think it's his responsibility to
22 deal with the court reporter and pay the court
23 reporter to stay on the line and wait for
24 Mr. Golladay to show up and then she can contact
25 all counsel if he does, in fact, log on. I think

1 that probably if he doesn't log on by 5:00 p.m. or
2 4:00 p.m., I guess we can probably assume that the
3 deposition is not going to go forward, but I don't
4 think that it's our responsibility to sit here and
5 wait for a deposition that we didn't subpoena the
6 witness and had nothing to do with setting up and
7 bill our clients for it. I'm open to suggestions
8 from anybody else as to how to handle this.

9 What are we going to do?

10 MR. COOPER: John, what's your pleasure?
11 Do you want to continue to sit here and wait for
12 Mr. Godot?

13 MR. COMERFORD: Did you mean to say
14 Mr. Golladay?

15 MR. COOPER: No, I meant to say Mr. Godot,
16 waiting for Godot.

17 MR. COMERFORD: Like the play?

18 MR. COOPER: Like the play.

19 MR. COMERFORD: Samuel Beckett?

20 I am not going to ask the court reporter
21 to stay on the record. We're one hour and
22 four minutes past the appointed time. I cannot get
23 Mr. Colvin to respond to me, so at this point I'm
24 going adjourn the deposition because the witness is
25 not here. I think I've made a record and we're

1 going to proceed accordingly.

2 MR. CLEMENTS: Hold on. I unfortunately
3 had my microphone muted. Mr. Iaconelli has
4 something to say. Sorry. I'm dealing with two
5 electronic devices here. It's one too many for me.

6 MR. IAConelli: Madam Court Reporter, can
7 you hear me? This is Mike Iaconelli speaking.

8 THE REPORTER: Yes.

9 MR. IAConelli: Mr. Comerford, did
10 Mr. Colvin tell you that my law firm was
11 representing Mr. Golladay in connection with the
12 third-party subpoena that you issued to
13 Mr. Golladay?

14 MR. COMERFORD: No.

15 MR. IAConelli: Did he tell you he,
16 Mr. Colvin, was representing Mr. Golladay in
17 connection with the third-party subpoena that you
18 issued to Mr. Golladay in this matter?

19 MR. COMERFORD: He told me that he
20 accepted service of the subpoena on behalf of
21 Mr. Golladay pursuant to Mr. Golladay's direction,
22 but he did not tell me that he was going to act as
23 a lawyer for Mr. Golladay as a witness in this
24 case.

25 MR. IAConelli: Did he tell you or did he

1 identify for you any lawyer that to his knowledge
2 was coming in to represent Mr. Golladay as his
3 legal counsel in connection with the third-party
4 subpoena that you issued Mr. Golladay?

5 MR. COMERFORD: We didn't talk about that.

6 MR. IACONELLI: So he didn't tell you that
7 Mr. Golladay was represented by a lawyer; is that
8 what you're saying?

9 MR. COMERFORD: Yes.

10 MR. IACONELLI: So going -- so when we
11 started the deposition this morning, you were aware
12 that no lawyer had entered an appearance or advised
13 you as counsel for the party that issued this
14 third-party fact witness subpoenaed that that
15 particular lawyer was actually representing
16 Mr. Golladay for this deposition that you noticed
17 pursuant to a subpoena today; is that correct?

18 MR. COMERFORD: Yes.

19 MR. IACONELLI: When are you going to
20 provide all counsel with the emails that you
21 referred to for the first time in your email to all
22 counsel or specifically your email to Mr. Cooper
23 last night at 9:30? You said you were going to do
24 it today, but what time today are you going to be
25 forwarding us all of your email communications

1 between Mr. Colvin and anyone in the firm and
2 Mr. Colvin?

3 MR. COMERFORD: I'll do it within three
4 hours.

5 MR. IAConelli: So that would be by
6 2:00 p.m. Eastern standard time, agree?

7 MR. COMERFORD: I will do it within three
8 hours. I don't know what time that is.

9 MR. CLEMENTS: We'll stipulate that it's
10 2:00.

11 MR. IAConelli: We're going off the
12 record.

13 MR. CLEMENTS: Are we done?

14 MR. COMERFORD: Do I get to ask questions
15 of Mr. Iaconelli now?

16 MR. CLEMENTS: Iles can follow up.
17 There's no more questions of anything anymore. Get
18 us the emails whenever you can. If they don't come
19 at 2:00, we won't sanction you or anything.

20 MR. COMERFORD: My question to
21 Mr. Iaconelli, which I don't think has been
22 answered yet, is, did he have any communications
23 with Mr. Colvin whether or not Kenny Golladay was
24 going to show up for the deposition today?

25 That's a question to you, Mr. Iaconelli.

1 MR. CLEMENTS: I think he hung up, but
2 I'll answer it for him. It's what I said, it
3 wasn't -- we had no idea. In other words,
4 Mr. Colvin didn't know whether or not he was going
5 to show up -- whatever he said. We were going by
6 what you were telling us. I'll be honest with
7 you -- I'll be honest with you, this has happened
8 to me, okay? Third parties don't show up. But
9 until you sent us the email last night -- was it
10 last night or late afternoon -- we were
11 anticipating Golladay to be here. I have a list of
12 questions for him. We were going to ask him, too.
13 We didn't get any exhibits from you. We were about
14 to email you to ask for the exhibits. So obviously
15 nothing was said to anybody that had anything to do
16 with or -- that would have indicated to any of us
17 that Golladay wasn't going to show up.

18 Now, personally, because I'm a huge
19 football fan, I had massive suspicions. And if I
20 was planning on taking the deposition of an
21 athlete, I doubt if I would have scheduled it for
22 the Thursday of a game day, an NFL athlete. The
23 only worse time to schedule it would be the Sunday
24 afternoon when he's playing. So if you try to get
25 the deposition, you might want to try to arrange a

1 different time. We'll be amenable to that. If
2 it's going to be a two or three-hour deposition,
3 you might be able to do it in the evening or when
4 these guys have off. I don't know when Detroit has
5 off. Sometimes they have off on Monday, the NFL
6 teams, veteran players might have some time. So I
7 had a suspicion this was never going to happen, but
8 nobody ever told us it wasn't going to happen. And
9 usually what happens is when the person in your
10 situation is taking the deposition and has not
11 gotten confirmation that the witness is going to
12 show up, you tell everybody and you adjourn it, so
13 that's what my puzzlement is right now. This is
14 normal litigation. This isn't all-out war,
15 Mr. Comerford. This isn't some giant conspiracy
16 over Golladay and whatever you think your going to
17 get, \$2.1 million, and maybe you have it on a
18 contingency fee, I don't know, but it's just normal
19 litigation. This happens. People don't show up.
20 So my only suggestion is that we -- right now this
21 is like one of those lawyer meetings on TV where
22 you have four or five lawyers at 4- or 500 bucks an
23 hour. It's just not something me or my firm does,
24 wasting time, wasting client's time like this. And
25 all this stuff on the record is completely

1 ridiculous. You don't cross-examine a lawyer at a
2 deposition, you don't -- it's unprofessional. It's
3 completely unprofessional. I suggest that you
4 would concentrate on maybe trying to procure the
5 witness' attendance and tell us when the deposition
6 is going to take place and maybe try to do it at a
7 time that's convenient for the witness so we're not
8 in this --

9 MR. COOPER: I think that's excellent
10 advice. I think John probably never thought of any
11 of that, and, therefore, it's been very helpful.
12 Can we now say good afternoon?

13 MR. CLEMENTS: I'd like to. Are we done?

14 MR. COOPER: Are we done, John?

15 MR. COMERFORD: Yeah. I mean, we're now
16 an hour and 11 minutes past the appointed time and
17 the witness has not shown up, so I am going adjourn
18 the deposition.

19 MR. COOPER: Thank you. Have a good day,
20 everybody.

21 MR. COMERFORD: You, too.

22 - - - - -

23 (The proceedings were concluded at 11:11 a.m.)

24 - - - - -

25

1 C E R T I F I C A T E

2 STATE OF OHIO,)
3) SS:
4 WAYNE COUNTY,)

5
6 I, Stephanie R. Dean, Court Reporter and Notary
7 Public within and for the State of Ohio, duly
8 commissioned and qualified, do hereby certify that
9 these proceedings were taken by me and reduced to
10 Stenotype, afterwards prepared and produced by
11 means of Computer-Aided Transcription and that the
12 foregoing is a true and correct transcription of
13 the proceedings so taken as aforesaid.

14 I do further certify that these
15 proceedings were taken at the time and place in the
16 foregoing caption specified.

17 I do further certify that I am not a
18 relative, employee of or attorney for any party or
19 counsel, or otherwise financially interested in
20 this action.

21 I do further certify that I am not, nor is the
22 court reporting firm with which I am affiliated,
23 under a contract as defined in Civil Rule 28(D).

24 IN WITNESS WHEREOF, I have hereunto set my
25 hand and affixed my seal of office at Doylestown,
Ohio on this 3rd day of December, 2020.

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31 Stephanie R. Dean, RPR

32 My commission expires August 30, 2025.
33 - - -
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